2015

In the Matter of Discipline Of: Ms. Susan Rose #07985 Respondent/Appellant

Utah Supreme Court

IN THE UTAH SUPREME COURT

In the Matter of Discipline of:
Ms. Susan Rose #07985
Respondent/Appellant **case no. 20151037**

3rd Dist. Court 070917445

BRIEF OF APPELLANT SUSAN ROSE

Appeal from a Disbarment and other Orders from the Third Judicial District Court for Salt Lake County, State of Utah,
the Honorable
Judge Royal Hansen Presiding

Susan Rose, (#07985)
9553 S. Indian Ridge Drive
Sandy, Utah 84092
(801) 674-9304;
(801) 572-3363
susan_rose@comcast.net

Appellant- Appearing Pro Se

Mr. Adam Bevis
Mr. Billy Walker; Ms. Barbara Townsend
Office of Professional Conduct
Utah State Bar
645 S. 200 East
Salt Lake City, Utah 84111
(801) 297-7042
adam.bevis@utahbar.org

Mr. Sean Reyes- FOR UTAH STATE
Office of the Attorney General
Attn: Utah Solicitor General
320 Utah State Capitol
P.O. Box 142320
Salt Lake City, Utah 84114-2320
(801) 366-0260
(801) 538-9600
(801) 366-0300
notices@agutah.gov

Mr. Daniel J. Becker
Court Administrator – for UTAH SUPREME COURT
Administrative Office of the Courts
450 South State
P. O. Box 140241
Salt Lake City, UT 84114-0241
Voice: 801-578-380

Appellee's Counsel

TABLEOFCONTENTS

TABLEOFAUTHORITIES

Cases

Statutes

Rules

Treaties

Treatises

Constitutional Provisions

DESIGNATED PARTIES TO THIS APPEAL

The Parties to this Appeal are as captioned in the title page. Mr. Walker and Ms. Townsend are the "Prosecutors". They are named personally for acts taken in violation of the Rules of Professional Conduct and Rules of Lawyer Discipline and Disability. ("UTSCT Rules") The Utah State Bar played no UTSCT-delegated authorized direct role in this lawyer's prosecution, as explained below. For all intents and purposes, the Prosecutors were acting as an extension of this Utah Supreme Court ("UTSCT"), a party, whose authority over the Prosecutors is plenary. The Prosecutors were not acting in behalf of the Utah State Bar, and not in behalf of any *Supreme Court-appointed* Ethics and Discipline Committee. The Utah Supreme Court is therefore the "State of Utah" when acting in its official capacity, and the party of real interest in the prosecution, NOT the Utah State Bar.

JURISDICTIONALSTATEMENT

This Court has authority to determine if it has jurisdiction over this Appeal, under the Utah Constitution's Article VIII sec. 4 regarding rule making and discipline of lawyers. *See, Injured Workers v. Utah,* 2016 UT 21" ¶14 ….the Utah Supreme Court has plenary authority to govern the practice of law. This authority is derived both from our inherent power and—since 1985—explicit and exclusive constitutional power. "

Jurisdiction is lacking if a) there has been a denial of Due Process as defined by the U.S. Constitution's 5th and 14th Amendments, or b) the State Courts lacked subject matter

or personal jurisdiction. [1]*Ramsay v. Kane Cnty. Human Res. Special Serv. Dist*., 2012 UT App 97, 276 P.3d 1174, 705 Utah Adv. Rep. 69 (Utah App., 2012)(" Accordingly, "subject matter jurisdiction cannot be waived," Chen v. Stewart, 2004 UT 82, ¶ 34, 100 P.3d 1177, and when a court determines that "a matter is outside the court's jurisdiction it retains only the authority to dismiss the action," Varian–Eimac, 767 P.2d at 570.").

ISSUES, STANDARDS OF REVIEW

Background

In 1997, this Appellant met all requirements to become a Utah State Bar member and active lawyer. In 1999, this Appellant undertook what initially appeared to be a simple employment dispute that turned out to be a Navajo Nation employment and tort matter, also

---

[1] E*lliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828*): *A Court acting ("without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.")*

World-Wide Volkwagen Corp. v. Woodson, 444 U.S. 286 (1980)
"A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878)."
[World-Wide Volkwagen Corp. v. Woodson, 444 U.S. 286 (1980)]

Black's Law Dictionary, Sixth Edition, p. 1574:
Void judgment. One which has has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901. See also Voidable judgment.

involving endangerment to the Navajo Nation public. . Later, Appellant sought to extricate her Navajo Nation member mother and child from a 7th District Court "grandparent visitation" action, while the mother and child were involved in an Indian Child Welfare Act parental rights termination proceeding in Navajo Nation Family Court. All parties to the 7th District Court were domiciled within the Navajo Nation, the mother and child in Aneth, and the alleged grandparents (who never showed proof of their relationship to a child they had not formally visited for about three years) lived in Montezuma Creek, rented Navajo Nation trust land.

The Prosecutor's complaint is based on two prior litigation cases involving defining Navajo Nation and United States ("US") jurisdiction over non Indians consensually involved with Navajo Nation members, employment, family and tort injuries, and endangerment to the Navajo Nation people; :
(1) The Prosecutor's "OPC matter" hereinafter, *MacArthur* matter and (2) the Prosecutor's Smith matter.

All the "claims" of the Prosecutor's formal complaint rest on the simple point that this Appellant argued, ahead of the learning curve, that Navajo Nation District and Family Courts had jurisdiction over non Indian parties within the Aneth extension of the Navajo Nation.

In both cases, non Indian parties were consensually within the borders of the Navajo Nation acting in non-governmental, proprietary capacities, WITHOUT State mandates or requirements. In both cases, the only Courts that had jurisdiction over the Appellant's clients and their legal claims was the Navajo Nation Courts.

All the Prosecutor's formal complaints' "claims" of this Appellant filing meritless and frivolous pleadings, filings, having conflicts in representation, etc. are inseparable from how Navajo Nation Court jurisdiction over non Indians is defined. This question is one prohibited to State Courts to define.

This Lawyer did not violate the Rules of Professional Conduct in her Navajo Nation law positions.

The Montana Doctrine Was Properly Interpreted ---not frivolous or meritless

In both cases, the Navajo Nation Courts took jurisdiction over this Appellants' clients' matters involving non Indians. In both cases, Congress expressly prohibits Navajo Court judges from applying Navajo Nation laws unequally to Indians and non Indians alike by the Indian Civil Rights Act 25 U.S.C. 1302. In both cases the Navajo Nation Courts understood the "Montana"[2] doctrine to allow for Navajo Nation Court jurisdiction over non Indians consensually involved with Indians within the Navajo Nation. The "consensual exception" to judicially-created presumptions against Navajo Nation jurisdiction over non Indians was explained recently by the Fifth Circuit Court recently explained, in *Dolgencorp, Inc. v. Miss. Band Indians*, 746 F.3d 167, 172 (5th. Cir., 2014) upheld by the U.S. Supreme Court case 13-1496 issued June 23, 2016.

> In Montana, the Supreme Court recognized that generally, "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." 450 U.S. at 565, 101 S.Ct. 1245. However, the Court explained:
>
> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or

[2] *Montana v. United States,* 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981)

other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.2

Id. The Court later held that "Montana's consensual relationship exception requires that the tax or regulation imposed by the Indian tribe have a nexus to the consensual relationship itself." Atkinson Trading Co., Inc. v. Shirley, 532 U.S. 645, 656, 121 S.Ct. 1825, 149 L.Ed.2d 889 (2001). Despite the limitations recognized in Montana and subsequent cases, the Court has consistently acknowledged that "[t]ribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty." Iowa Mut., 480 U.S. at 18, 107 S.Ct. 971.

"[W]here tribes possess authority to regulate the activities of nonmembers, civil jurisdiction over disputes arising out of such activities presumptively lies in the tribal courts." Strate v. A–1 Contractors, 520 U.S. 438, 453, 117 S.Ct. 1404, 137 L.Ed.2d 661 (1997) (quotation and brackets omitted). A tribe's regulation of nonmember conduct through tort law is analyzed under the Montana framework. See, e.g., Attorney's Process & Investigation Services, Inc. v. Sac & Fox Tribe, 609 F.3d 927, 938 (8th Cir.2010) ("If the Tribe retains the power under Montana to regulate ... conduct, we fail to see how it makes any difference whether it does so through precisely tailored regulations or through tort claims...."); Philip Morris USA, Inc. v. King Mountain Tobacco Co., Inc., 569 F.3d 932, 939 (9th Cir.2009) ("The Montana framework is applicable to tribal adjudicative jurisdiction, which extends no further than the Montana exceptions.").3 In considering regulation through tort law, "courts applying Montana should not simply consider the abstract elements of the tribal claim at issue, but must focus on the specific nonmember conduct alleged, taking a functional view of the regulatory effect of the claim on the nonmember." Attorney's Process, 609 F.3d at 938.

Under *Dolge*n's analysis, this Appellant, ahead of the curve perhaps, properly argued the Navajo Nation had jurisdiction over her clients, and the non Indians involved regarding the Navajo Preference in Employment Act and torts, (MacArthur matter), and over any visitation or social matters involving a Navajo Nation child (Smith matter).

MacArthur's ruling

In *MacArthur et al v. San Juan County et al*, 391 F. Supp. 2d 895, 963-63 (D. Utah 2005), Judge Jenkins was under a mandate to apply *Montana*, but ruled in favor of this

Appellant's clients that the *Montana* doctrine SHOULD NOT APPLY to their case,

> Consistent with the court of appeals' mandate, this court has applied the Montana analysis in deciding the jurisdictional issues on remand. Yet the drastic differences in historical context and current consequence between the 1933 Act and the Crow Allotment Act necessarily raise the question whether Montana's limited reading of the Crow Tribe's authority under its 1868 Treaty has any logical bearing upon the Navajo Nation's authority under the 1868 Navajo Treaty over the lands within its boundaries, particularly over parcels that were purchased with Navajo trust funds and are still held in trust for the Navajo people of San Juan County.
> Id.

Navajo Nation-United States Treaty Based Executive Agreement bars state courts.

In both the Prosecutor's underlying cases, if this Appellants' clients claims could not be heard in US-directed NN Courts, then they had nowhere to go for Due Process.

(1) **Executive Agreement**, the U.S.-N.N. Judicial Program Indian Self Determination Act Contract, rooted-in; (2) **United States Treaties**, guaranteeing freedom from any "state" authority, (a) the Treaty of Guadalupe Hildago of 1848[3], (b) the 1849 Navajo Nation – United States Treaty[4], and (c) the 1868 Navajo Nation-United States Treaty[5], and (3)

---

[3] Id. Article XI "….And, finally, the sacredness of this obligation shall never be lost sight of by the said Government, when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but, on the contrary, special care shall then be taken **not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain."**

[4] Id. Article I "The said Indians do hereby acknowledge that, by virtue of a treaty entered into by the United States of America and the United Mexican States, signed on the second day of February, in the year of our Lord eighteen hundred and forty-eight, at the city of Guadalupe Hidalgo, by N. P. Trist, of the first part, and Luis G. Cuevas, Bernardo Couto, and Mgl Atristain, of the second part, the said tribe was lawfully placed under the **exclusive jurisdiction and protection of the Government of the said United States,** and that they are now, and will forever remain, under the aforesaid jurisdiction and protection.

[5] Id. "ARTICLE X. No future **treaty for the cession** of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or

United States Statutes based on the Treaties, (a) the 1933 Aneth Extension Act[6], (b) Indian Civil Rights Act[7], ("ICRA"), and (c) Indian Self-determination Act[8], ("ISDA"), (d)

---

force against said Indians **unless agreed to and executed by at least three-fourths of all the adult male Indians occupying or interested in the same;"**

[6] *MacArthur* at 961 ("In contrast, the state-owned lands at the Montezuma Creek Clinic are *not* the product of "land alienation occasioned by" the allotment policy; they are lands incorporated within Reservation boundaries extended by Congress, **and purchased using funds derived from tribal oil and gas leasing in the 1933 Aneth Extension, funds held in trust for the Navajo people of the area**. *See Pelt v. State of Utah,* 104 F.3d 1534 (10th Cir.1996); *State of Utah v. Babbitt,* 53 F.3d 1145, 1149 (10th Cir.1995) (noting Congress' clear intent that oil and gas development on the Aneth Extension benefit San Juan Navajos). The presumptions underlying the Allotment policy find no application here because the Montezuma Creek area was *added* to the Navajo Reservation as part of the major shift in federal Indian policy reflected in legislation such as the Indian Reorganization Act of 1934.")

[7] 25 USC 1326 "State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults. (Pub. L. 90–284, title IV, § 406, Apr. 11, 1968, 82 Stat. 80.)

Santa Clara Pueblo v. Martinez, 436 U.S. 49,64 (1978)(The other Titles of the ICRA also manifest a congressional purpose to protect tribal sovereignty from undue interference. For instance, Title III, **25 U.S.C. §§ 1321-1326,** hailed by some of the ICRA's supporters as the most important part of the Act, provides that States may not assume civil or criminal jurisdiction over "Indian country" without the prior consent of the tribe, thereby abrogating prior law to the contrary. Other Titles of the ICRA provide for strengthening certain tribal courts through training of Indian judges, and for minimizing interference by the Federal Bureau of Indian Affairs in tribal litigation. Where Congress seeks to promote dual objectives in a single statute, courts must be more than usually hesitant to infer from its silence a cause of action that, while serving one legislative purpose, will disserve the other")

[8] 25 USC 450 "**(a) Findings respecting historical and special legal relationship, and resultant responsibilities** The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that— **(2)** the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.")

the Indian Child Welfare Act[9] ("ICWA").

ISSUES AND STANDARDS OF REVIEW

Issue 1. Under Article VI of the U.S. Constitution's "supremacy clause", upon what legal basis do Utah Courts have any jurisdiction to base a disbarment upon questions of law prohibited to Utah Courts' to address, here, defining the contours of Navajo Nation Courts' jurisdiction over non Indians?

Standard of Review: Constitutional and law questions are reviewed without deference to the lower Court. The Court has "plenary" authority over lawyer discipline. *Injured Workers, supra.* Questions of law involve a review of correctness, with no deference given to the Courts below. *Sandy City v. Lawless*, 2016 UT App 63, 370 P.3d 1277, ¶ 5 (Utah App., 2016). See also, "Constitutional issues… are questions of law that we review for

---

[9] 25 USC 1911 "**(a) Exclusive jurisdiction**
An Indian tribe shall have jurisdiction exclusive as to any State over **any** child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.
…. (c) State court proceedings; intervention
In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.
(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes
The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.
(Pub. L. 95–608, title I, § 101, Nov. 8, 1978, 92 Stat. 3071.)"

correctness." *Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177, 1185.

Issue 2. Under Article III of the U.S. Constitution, upon how do Utah Courts have any 28 USC 1331 federal question jurisdiction to retry the same issues already litigated to the lawyers' advantage arising in Navajo Nation and United States Courts?

Standard of Review: Constitutional and law questions are reviewed without deference to the lower Court. The Court has "plenary" authority over lawyer discipline. *Injured Workers, supra.* Questions of law involve a review of correctness, with no deference given to the Courts below. *Sandy City v. Lawless*, 2016 UT App 63, 370 P.3d 1277, ¶ 5 (Utah App., 2016). See also, "Constitutional issues… are questions of law that we review for correctness." *Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177, 1185.

Issue 3. Did the People of the State of Utah exceed their inherent authority by passing the 1984 amendment to Article VIII sec. 4 of the Utah Constitution, that deprives all Utah lawyers of the Equal protection of the three branches of government, thus violating the U.S. Constitution's 14tth Amendment?

Standard of Review: The Court has "plenary" authority over lawyer discipline. *Injured Workers, supra.* Questions of law involve a review of correctness, with no deference given to the Courts below. *Sandy City v. Lawless*, 2016 UT App 63, 370 P.3d 1277, ¶ 5 (Utah App., 2016). See also, "Constitutional issues… are questions of law that we review for correctness." *Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177, 1185.

Issue 4. Has this Court acted outside the Utah Constitution's authority by adopting lawyer discipline rules that fail to comport with U.S. Constitutional 5th and 14th Amendment standards protecting lawyer's interests in their licenses?

Standard of Review: The Court has "plenary" authority over lawyer discipline. *Injured Workers, supra.* Questions of law involve a review of correctness, with no deference given to the Courts below. *Sandy City v. Lawless*, 2016 UT App 63, 370 P.3d 1277, ¶ 5 (Utah App., 2016). See also, "Constitutional issues… are questions of law that we review for correctness." *Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177, 1185.

Issue 5. Have the Prosecutors' numerous UTSCT Rule violations rendered the entire prosecution void for lack of Due Process and Equal Protection of the law?

Standard of Review: The Court has "plenary" authority over lawyer discipline. *Injured Workers, supra.* Questions of law involve a review of correctness, with no deference given to the Courts below. *Sandy City v. Lawless*, 2016 UT App 63, 370 P.3d 1277, ¶ 5 (Utah App., 2016). See also, "Constitutional issues… are questions of law that we review for correctness." *Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177, 1185. What is problematic here, is that the legal issues going to policies and procedures of the Prosecutors are outside the lower court's jurisdiction to rule upon, according to the February 13, 2015 Order issued by Judge, now Justice, Himonas,

> "To the contrary, the Utah Supreme Court has "exclusive appellate jurisdiction" over attorney discipline proceedings, including proceedings before the screening panel. 14 *Barnard v. Sutliff,* 846 P.2d 1229, 1237 (Utah 1992); *accord* Utah Const. art. VIII,§ 3; Utah Code Ann.§ 78A-3-102(3)(c). Therefore, the Utah Supreme Court is the sole court with jurisdiction to address any "challenges to the general procedures of the Bar," and "[a]ny challenge to the Bar's general procedures that arises out of a specific disciplinary matter, no matter how denominated, effectively amounts to an interlocutory appeal or a request for an extraordinary writ in that proceeding and should be brought *only* to th[e supreme] court." *Barnard,* 846 P.2d at 1237 (emphasis added).

Issue 6. Under the U.S. Constitution's 5th and 14th Amendments, does this Court exceed its authority by refusing to stop any lower court processes lacking jurisdiction,

and/or involving prosecutorial misconduct of Rules violations depriving lawyers of Due Process and equal protection?

Standard of Review: The Court has "plenary" authority over lawyer discipline. *Injured Workers, supra.* Questions of law involve a review of correctness, with no deference given to the Courts below. *Sandy City v. Lawless*, 2016 UT App 63, 370 P.3d 1277, ¶ 5 (Utah App., 2016). See also, "Constitutional issues… are questions of law that we review for correctness." *Chen v. Stewart*, 2004 UT 82, ¶ 25, 100 P.3d 1177, 1185.

Issue 7: Is the lawyer discipline process void if the Prosecutor fails to produce the records necessary for this Court to govern the lawyer discipline in this case because of the Prosecutors a) not producing the screening panel records, and b) disobeying the Trial court's Rule 7 orders they failed to produce?

Standard of Review: *Worthen, In re,* 926 P.2d 853, 872- 873 (Utah, 1996)

> A general observation about the standard by which the Commission's findings, conclusions, and reasoning will be judged: We expect the Commission's findings to resolve questions of fact and provide an explanation of its assessment of the facts so as to provide a reasoned basis for its decision. There must be an explanation of the linkage between the raw facts and the Commission's ultimate conclusions, including an explanation of why the Commission drew the inferences from the facts that it did. Finally, the Commission must logically link its factual findings and legal conclusions to the recommended sanction order to explain why it chose one sanction over another. These requirements are not out of the ordinary. They are consistent with what we have required of other state agencies. As we explained when describing the obligation of the Public Service Commission to demonstrate the basis for its orders:
>
> The Commission cannot discharge its statutory responsibilities without making findings of fact on all necessary ultimate issues under the governing statutory standards. It is also essential that the Commission make subsidiary findings in sufficient detail that the critical subordinate factual issues are highlighted and resolved in such a fashion as to demonstrate that there is a logical and legal basis for the ultimate conclusions. The importance of

> complete, accurate, and consistent findings of fact is essential to a proper determination by an administrative agency. To that end, findings should be sufficiently detailed to disclose the steps by which the ultimate factual conclusions, or conclusions of mixed law and fact, are reached. Without such findings, this Court cannot perform its duty of reviewing the Commission's order in accordance with established legal principles and of protecting the parties and the public from arbitrary and capricious administrative action. Milne Truck Lines, Inc. v. Public Service Comm'n, 720 P.2d 1373, 1378 (Utah 1986).

DETERMINATIVE PROVISIONS

The list of determinative provisions are extensive and are attached to this Appeal in the front of the Addendum.

STATEMENT OF THE CASE

Nature of the Case

The formal complaints' claims are grounded in Navajo and Federal law prohibited to State Courts to entertain. Prosecutors and the lower court have produced no law to the contrary.

The lawyer for the Prosecutors identified the issues were the "same" as Judge Bruce S. Jenkins and the Tenth Circuit ruled on in final non appealable orders. Prosecutors and the lower court have produced no law allowing for relitigation or retrying final non appealable orders, and have shown no law making the Prosecutor and state courts an "appeal court" for disappointed litigants in any litigation.

There is no law allowing the Utah People to enact a Utah Constitutional Amendment that eliminates the protections of the three branches of government for lawyers, as a class, making all UTSCT Rules unenforceable by Utah government oversight.

This Court's system of lawyer discipline "names them", "blames them", and then "claims them". This Court's lawyer discipline system does not balance or protect lawyers' rights in their licenses, as a class, and as applied here, from opposing counsel or the Prosecutor wishing to silence critical Bar members, to use the Prosecutors office to destroy lawyers that might, just possibly, prevail in showing Utah Courts jurisdiction does not follow all or nearly all non Indians consensually within the Navajo Nation borders. Or silence lawyers who might prevail against the Prosecutor, as was done against the only lawyer this Appellant had representing her. No source of law supports such a system, that the Prosecutor, as an appointed advisor, helped design. None was produced.

The Prosecutors NEVER explained how they, or the trial court, could have any Utah Supreme Court delegated authority "by rule" when the Prosecutors violated numerous UTSCT Rules in bringing this case, and in prosecuting it.

There is no law supporting this Court's decision refusing to stop a proceeding it well understood was grounded in Navajo and US exclusive questions barred to states to entertain, where Prosecutors were retrying final non appealable federal court orders, where Prosecutors were violating the UTSCT Rules, and where the screening panel, the trial court judges, were subject to the Prosecutor's ability to prosecute the Judge albeit after he returns to practice.

Course of the Proceedings are the Relevant Facts

The Appellant challenged the jurisdiction of this Court in state and federal court

proceedings at "all points of litigation." [10]

The Bar is Not a Party

1. This Court integrates the Bar into itself, forces Bar members to financially support the Prosecutor, Rule 14-515, and denies delegating authority to the Utah State Bar or Trial Courts to prosecute the Prosecutor, or regulate the Prosecutor's proceedings and policies, or even to enforce this Court's Rules against the Prosecutors. The "integration" merely serves to silence, and prevent the "Bar" from advocating against unconstitutional rules, processes, and procedures this Court has adopted through its chosen Advisory Committees, upon which the Prosecutor has been appointed, instead of the elected Bar Commissioners. Integration silences any knowledgeable dissent.

The MacArthur matter

2. For the *MacArthur* matter, there was no Rule 14-510(a) "informal complaint" mailed to the Appellant. Only a Notice of Informal Complaint was mailed to her. No "by rule" rights attach to a Notice of Informal Complaint that otherwise attach to an Informal complaint.

---

[10] *Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 897, 111 S.Ct. 2631, 115 L.Ed.2d 764 (1991)(J. Scalia concurrence) ("Such an error may be raised by a party, and indeed **must be noticed** sua sponte by a court, at **all points in the litigation**, see, e.g., American Fire & Casualty Co. v. Finn, 341 U.S. 6, 17-18, 71 S.Ct. 534, 541-542, 95 L.Ed. 702 (1951); Mansfield, C. & L.M.R. Co. v. Swan, 111 U.S. 379, 382, 4 S.Ct. 510, 511, 28 L.Ed. 462 (1884); Capron v. Van Noorden, 2 Cranch 126, 127, 2 L.Ed. 229 (1804). Since such a jurisdictional defect deprives **not only the initial court but also the appellate court** of its power over the case or controversy, to permit the appellate court to ignore it because of waiver would be to give the **waiver legitimating** as opposed to merely remedial **effect, i**.e., the effect of approving, ex ante, unlawful action by the appellate court itself. Id.")

3. For the *MacArthur* matter, at no time before or during the Screening Panel process does this Appellant recall that her opposing counsel in federal court filed an unnotarized informal complaint by fax with the Prosecutor.

4. So no Rule 14-510 "any witnesses" could be called since the Appellant was unaware of opposing counsel's involvement in the *MacArthur* matter.

No UTSCT Screening Panel, investigation, or factual findings or evidence to support a public trial by litigation lawyers subject to the Prosecutor's prosecution power.

5. This Appellant had no "screening panel" or "screening panel" "hearing".

6. The Prosecutors using this Court's Rule 140504(h) administrative and secretarial powers, divided this Court's Rule 14-503(d) appointed Ethics and Discipline screening panel in half and then into subgroups of 3 and 4. The claim is that the "quorum" was the same as a "screening panel" so by calendaring the dates of any subgroup hearing a year in advance, the Prosecutors chose the five of this Court's appointed eight members to be eliminated from "hearing" the case.

7. The Prosecutor's appointed subgroup of three were not Rule 14-504(f) randomly assigned.

8. The Prosecutor's appointed subgroup never investigated the case due to a Prosecutor one-hour time limit on the two hearings, and lack of informing the Appellant of those presenting oral, fax, or written complaints against her, one being by opposing counsel Carolyn Cox.

9. Both underlying cases were assigned to the same subgroup of three Prosecutor-hand picked persons, two being lawyers the Prosecutor could prosecute under Rule 14-506.

10. The Prosecutor's subgroup never made any factual findings.

11. The Prosecutor's subgroup never linked any evidence to any "claims" of Rule violations.

12. The formal complaint was filed in behalf of the Utah State Bar who had no involvement in the proceedings, or even in formulating rules that this Court delegated authority to Advisory committees of its choosing, including the Prosecutor, for designing and advising the Court regarding.

13. There were no factual findings to support the "claims".

14. There were no linkages between snippets of hearsay statements by judges taken out of the context of the entirety, with the "claims" rendering the "claims" as wholly unsupported.

15. The one hour limit denied this Appellant the ability to call all her witnesses.

16. The formal complaints' "facts" the Prosecutors' inserted into the document in the name of the Ethics and Discipline Committee and Utah State Bar, a subterfuge that misled this lawyer and any Courts presuming the formal complaint to be the work of the Utah State Bar.

Lack of Substantive Evidence

18. No substantive evidence supports the formal complaints' claims.

19. Courts' orders show this Appellant was comporting with the Rules of other jurisdictions in which this Appellant believed her activities effected.

No Impartial Triers

20. Rule 14-506 eliminated any "impartial" triers below, or fact finders below, since this

Court delegated authority to the Prosecutor to prosecute any lawyer on the subgroup, and prosecute the trial judges, for professional misconduct the Prosecutor defines that occurs by the Judge while he is on the bench, albeit after he returns to practice.

21. She sought to remove the case back to US District Court for the original judge to adjudicate the case where the entire Navajo Nation Court record and entire US District Court records were easily and economically accessible. Judge #1 Honorable Judge Faust denied this motion.

22. Motions to dismiss, and summary judgment motions to dismiss were uniformly denied, without explanation.

23. The Court on threat of default ordered the Appellant to file an "Answer" without first ruling on jurisdiction issues. It was not until Feb. 13, 2015's Order by Judge Himonas, on his first day as a Justice, that the Court explained that lawyers' discipline is a bifurcated process wherein Trial Courts' lack jurisdiction over processes and procedures, that would also include jurisdiction questions only this Court could answer.

23a. Rule 14-517 says the Rules of Civil Procedure govern, but in fact, Rule 17 doesn't govern, since the process is non adversarial, thereby also eliminating applications of the URCP to the Prosecutors and eliminating their protections for lawyers.

NO Order to Compel Production or waive defenses

24. `There was never an Order to compel "production" of all documents the Prosecutors sought or one waiving all this Appellants' objections and defenses to discovery.

25. There was an order by the District Court to respond individually to each production request raising all objections and defenses.

26. There was no charges ever made that this Appellant or her clients obtained evidence unethically, and NO evidence of any type to support such a claim or finding, yet a "default" was entered based on a finding that would waive the Appellants' clients privileges.

27. This Appellant refused to waive her clients' privileges in discovery.

28. This Appellant refused to waive her own U.S. Constitutional 5th Amendment privileges, particularly since Ms. Townsend identified they were looking for "other instances" of misconduct, and it was unknown if the Prosecutors were seeking criminal prosecution

29. A default was entered directly as a result of the Prosecutor's demands for one, the Prosecutor admitting they so lacked evidence they did not know how to proceed.

30. The District court Judge #2 Honorable Judge Trease refused to sign any proposed Rule 7 order on two different occasions.

31. There was never a "default judgement" entered, or certified by the Court's clerk.

32. The #3 Judge, Honorable Judge Himonas, held a "sanctions" hearing for mitigation and aggravation on "facts" and in reality, "claims" all being taken as true.

33. This Appellant called witnesses Mr. Douglas Short and Mr. Tyler Larsen.

34. This Appellant submitted numerous documents, and certified US District Court documents.

35. On April 7, 2014 is when the Prosecutor revealed his policy of cutting screening panels in half and not randomly assigning them.

36. Mr. Short filed a motion to dismiss for lack of a "screening panel" or "screening panel hearing".

37. On Feb. 13, 2015, Judge Himonas liberally interpreted Rule 14-504 to read that a "quorum" and a "screening panel", not a "quorum *of a screening panel* (who were never called)", was acceptable.

38/ By cutting the eight member screening panels in half and then into subgroups of 3 and four, the Prosecutors manipulated the process to cut their burden from convincing the subgroup to file a public trial complaint, from a possible 5 out of 8, down to just 2 out of 3.

39. In the Feb. 13, 2016 Order, Judge Himonas identified trial courts are not appellate courts for pretrial activities, and cited to Rule 14-506 (giving the Prosecutors authority to prosecute the trial judges) out of context.

40. Judge #4, Judge Hansen called for a second screening panel hearing.

41. Still no "trial", with all presumptions for the Prosecutors who admitted in 2010 they so lacked evidence, they could not proceed.

42. Knowing that all the Prosecutors were acting anyway they wished, knowing the trial judges could not appear to be impartial due to Prosecutor power, and conversely, trial court lack of it, knowing that hearsay evidence was the only evidence the Prosecutors were presenting, and that being untrue and perjured, and knowing that at some point a higher court would have to review the process, this Appellant determined not to participate in a disbarment process lacking any Due Process or Equal Protections.

43. Perhaps the cherry on the cake, was the Prosecutor prosecuting the one lawyer courageous enough to assist me, who is facing his own sword of Damocles. By doing so, an arguably unwaivable conflict was put into place by the Prosecutor.

<u>Relevant Facts: Rule violations</u>

This disbarment is based upon the following Prosecutor's Rule violations that the Trial Court had no "by rule" jurisdictional authority to restrain. ADD 0148.

(1) (*jurisdiction prohibition)* violating Utah Rule of Professional Conduct 8.5 cited above barring non reciprocal prosecutions for lawyers whose work predominantly effects other jurisdictions;

(**2)**(*no proper notice for the MacArthur matter)* substituting a Rule 14-510(a)(5) "Notice of Informal Complaint" (similar to a summons) for the Rule 14-510(a)(1) "Informal Complaint" (the Rule-designated case initiating document requiring screening panel investigation, analysis, research, and potential for settlement) for legal notice of the Prosecutor's claims;

(**3)**(*illegal pretrial process*) as pretrial Rule 14-503(h) secretary- administrator of the pretrial panels, he did not call the UTSCT eight member screening panel initially, replaced without rule authorization, with a Prosecutor-administrative "policy" of hand selected subgroups of 3 [ADD 0239-0247, and 0250] (cutting his burden from 5 of 8 maximum, to 2 of 3);

(**4**) eliminated any Rule 14-503(f) (*supra*) random assignment of the cases,[ADD 0263, 0270] with the same panel hearing both underlying cases;

(**5)** arbitrarily limiting (on going practice) the cases to one hour pre trial hearings, wherein all witnesses could not be called eliminating the screening panels' rule required investigation, [ADD 0250];

(**6)** (*a "personal" not "Bar"complaint)* bringing the formal complaint in the name of the Utah State Bar and Utah Supreme Court Ethics and Discipline (screening panels) when there was

(i) no legally constituted Rule 14-503(d) screening panel, or even a quorum *of the screening panel ---since all 8 were not called;*

(ii) who did not make any findings of fact, [ADD 0268, 0275]; **(iii**) did not make any linkages between facts, claims, and evidence for the Utah Supreme Court to understand the pretrial process, because the subgroup violated Rule 14-503(f) by not making any factual findings, or linking them to evidence, or the counts (*Worthen, In re*, 926 P.2d 853, 872-873 (Utah, 1996)(linkages are required for appellate review- let alone lawyer understanding of the complaint);

(**7)** (*inadequate notice)* filing a complaint failing to meet Utah's Rule of civil procedure (U.R.C.P.) 8 and Rule 9 standards, with snippets of hearsay Judge's statements taken out of context as "facts" not linked to the "claims", outside the entirety of the underlying cases', that did not plead any facts supporting *mens rea* of willfulness or knowing rules of professional conduct alleged violations to support suspension or disbarment Rule 14-605;

(**8)** violating Rule 11 duty to investigate, admitting 6 years after initiation of the case they did not know this Petitioner's clients names and therefore the Court had to issue a default [ADD 0213, 0231-32], on the first pages of Court orders [ADD 0088] and underlying case's Court dockets,

(**9)** violating U.R.C.P. Rule 10 by putting the words "Utah State Bar" in the caption box when it was not involved, had no interest, and where opposing counsel and their non Indian clients were the beneficiaries, cloaking themselves with the name for federal abstention.

Lack of Records deprives this Court of its ability to function. Prosecutorial misconduct deprives this Court of its ability to understand, much less regulate lawyer discipline in this case due to 1) no screening panel records the Prosecutors refuse to produce, and 2) no Rule 7 Orders that would explain the reasoning of dismissing motions to dismiss, particularly when Rule 56 was violated in the Prosecutore's refusals to answer each charge in the motions.

Disposition of the Matter

1. September 3, 2007 pretrial "Screening Panel" order – "Smith matter"
The same panel signed "9/13/2007" [ADD 0270 at 0278]
2. Utah Supreme Court September 21, 2015 Denial of an Extraordinary Writ and filing restrictions [ADD 0196]
3. Utah 3rd Dist. Court November 2, 2015 DISBARMENT—[ADD 0157]
4. Utah Supreme Court March 9, 2016 refusal to rule on motions that would Void the case, denying them [ADD 0196a-b]
5. Utah Supreme Court March 14, 2016 refusal to rule on Petition/motion denial of Rule challenges and habeas and injunctive relief [ADD 0197]
Utah Supreme Court April 5, 2016 denial of motion to delegate authority
6. To the trial court to rule on the motions of March 9 2016 [ADD 0200]

7. Utah Supreme Court April 28, 2016 denial of motion to refer the case to mediation [ADD 0201]

8. Utah Supreme Court September 13, 2016 denial of motion to stay Disbarment Ordering calendaring that shuts off district court's ability to issue a stay [ADD 0201A]

9. July 19, 2016, Third District Court denied post judgment motions. ADD 0179

10. October 13, 2016 Third District Court denied a motion for a new trial and two other post judgment motions. 0201C et seq.

11. Justice Lee denied a stay of the disbarment. ADD 0201A

SUMMARY OF THE ARGUMENT

Jurisdiction can't be presumed. The Prosecutors have failed to produce any law, or facts, or substantive, non hearsay evidence showing how Utah has jurisdictional authority 1) to define Navajo Nation or US Courts' jurisdiction, using lawyer discipline cases, as a class, as a vehicle in a "friendlier forum" for doing so; 2) to allow opposing counsel in non state tribunals, to use the Prosecutor to retry, relitigate final non appealable US Court orders on the "same" issues of this Appellants' conduct, showing she was comporting with the Rules in other jurisdictions, as would apply to all Utah lawyers operating in federal and non state tribunals; 3) to adopt a Utah Constitutional amendment that will deprive all Utah lawyers, as a class, of the Equal Protection of a three branch government; 4) to adopt Rules governing lawyer discipline that violate the US Constitution's 5th and 14th Amendments, as defined by the US Supreme Court; 5) to claim jurisdiction when the Rules by which the UTSCT authority is delegated are violated by the Prosecutors, thereby denying lawyers

Due Process and Equal Protections of the law; 6) to refuse to govern the lawyer discipline process by refusing to enforce the UTSCT rules as plainly read and strictly construed, and 7) the Prosecutors by not producing the screening panel records, and by not filing Rule 7 Orders have left this case with "hanging appeal" issues, and without sufficient information for this Court to determine why the Prosecutors' subgroup ruled as they did.

ARGUMENT

Issue 1. Under Article VI of the U.S. Constitution's "supremacy clause", there is no legal basis for Utah Courts to have any jurisdiction to base a disbarment upon questions of law prohibited to Utah Courts' to address, here, defining the contours of Navajo Nation Courts' jurisdiction over non Indians.

Utah has Always Agreed to the Supremacy of the United States

The State of Utah, as a condition of joining the United States, agreed in Utah's Enabling Act[11], and then in its Constitution, that the U.S. Constitution (presumably as e US Supreme Court interprets it), is the "Supreme Law of the Land." Utah Constitution Article 1 Sec. 3. The U.S. Constitution's Article VI sec. 2, "Supremacy clause", was changed from the prior Articles of the Confederation's Article VI (that gave states authority to start Indian wars). The US Constitution's Framers made Article VI self executing.

Article VI of the United States Constitution Sec. 2 Supremacy Clause

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; **and the judges in every state shall be bound thereby,** anything in the Constitution or laws of any State to the contrary notwithstanding.

[11] Enabling Act, SEC. 3. ……the Constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and **not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.**

No less than the colonies joining the Union, Utah agreed to the U.S. Constitution's Article VI, wherein "This Constitution", "laws of the United States", and "Treaties" "which shall be made" "shall be the supreme law of the land." The Treaty of 1849, 1868, Aneth Extension, ICRA, ICWA all specifically prohibit Utah having any authority over defining federally-recognized Indian Nations' Court's jurisdiction, most particularly, here, where the US-NN mutually agree to the Navajo Nation's Courts' definitions of its jurisdiction.

Prosecutors Failed to Meet their Burden of Establishing State Jurisdiction being Superior to United States law.

In all cases within Utah and US and Navajo Nation Courts, the Plaintiff bringing the action has a duty to establish that the subject matter of the case falls within the subject matter the Court can adjudicate. *M.W. v. T.I.Z. (In re Baby E.Z.)* , 266 P.3d 702, 687 Utah Adv. Rep. 17, 2011 UT 38 (Utah, 2011)

> ¶ 31 "[T]he concept of subject matter jurisdiction relates to 'the relationship between the claim and the forum that allows for the exercise of jurisdiction.' " *Johnson,* 2010 UT 28, ¶ 9, 234 P.3d 1100 (quoting *Chen v. Stewart,* 2004 UT 82, ¶ 35, 100 P.3d 1177). And because parties can raise subject matter jurisdiction at any time, even for the first time on appeal, we have limited the concept of subject matter jurisdiction to those cases in which the court lacks authority to hear a class of cases, rather than when it simply lacks authority to grant relief in an individual case. *Id*

The Prosecutors provide **no law** upon which the State can rest to use lawyer discipline as a means to define Navajo Nation Court jurisdiction over non Indians, by and through ruling a lawyer's definitions of Navajo Court jurisdiction, were frivolous, or meritless, or her client relationships violated "state" interests, when the underlying cases fall within NN and US federal question EXCLUSIVE jurisdiction, and no "state" interests exists. There is no legal

basis for a state to take such a means to define Navajo Nation Court jurisdiction. None exists.

For example, all Utah Courts have jurisdiction to hear divorce cases. They do not have jurisdiction to adjudicate Alaskan divorces, or Oklahoma divorces. Utah Courts have authority to enforce contracts. But it lacks jurisdiction if the issue in a contract dispute turns on federal law determinations as "an ingredient" in the dispute. *Merrill, Lynch, Pierce, Fenner and Smith v. Manning*, No. 14–1132. Argued December 1, 2015—Decided May 16, 2016 Page 9-10

> After all, the test for §1331 jurisdiction is not grounded in that provision's particular phrasing. This Court has long read the words "arising under" in Article III to extend quite broadly, "to all cases in which a federal question is 'an ingredient' of the action." Merrell Dow Pharmaceuticals Inc. v. Thompson, 478 U. S. 804, 807 (1986) (quoting Osborn v. Bank of United States, 9 Wheat. 738, 823 (1824)).

Disappointed Litigants From Other Jurisdiction should not use State Courts to Invade US and NN sovereignty

In the *MacArthur* matter, the three large firms' opposing counsel, disappointed in not repeatedly obtaining sanctions against this Appellant and her clients in Navajo Nation and US District Court, and Tenth Circuit Court, did not appeal the denial of their many motions for sanctions. Why bother with a federal appeals Court when the Prosecutor will utterly destroy your opponent for exercising 1st amendment rights to obtain the ONLY Due Process Congress directs for persons suffering legal injured within the Navajo Nation, by Treaty, by Contract, by statutes?

Under Treaties, Statutes, and now Nation to Nation contracts, that specficially bar state involvement in Navajo Nation Courts, cited above, the opposing counsel doesn't get

to turn Utah into an appeal court. Defining federally recognized Indian Nation's Courts' jurisdiction rests first with the Indian Courts' tribunals, and secondly with United States courts. For a state to take it upon itself to make such definitions by charging a lawyer with filing meritless or frivolous filings, so the State Court can then define the proper definitions the lawyer should have used, is disingenuous, and places state courts in the place of Navajo Nation and US Appeal Courts. The discussion between Judge Bruce S. Jenkins and Mr. Gregory Sanders representing the Prosecutors is instructive and illuminating. Add 0617.

Prosecutors would not be denied Due Process by prosecuting claims in US District Court before the Judge that had ruled on them 4 times. This Court adopted UTSCT Rule 15-503 to direct the Prosecutors to bring actions in the United States District Courts and any other jurisdiction. Presumably, Rule 14-503 expressed this Court's sensitivity to the other jurisdictions' authority over lawyer discipline within their Courts, and the availability of the entire Court record before a Judge fully knowledgeable about the lawyers appearing before him. Just not for Indian law cases?

Conclusion: The Prosecutors, and lower trial court judges, have not produced any law supporting this Court having jurisdiction to define Indian Nation jurisdiction, and exclusive non state issue, Ute, Myton, supra, particularly given Article VI of the U.S. Constitution's Supremacy clause to which this State agreed to abide by in exchange for statehood, as did all the original colonies also.

Issue 2. Under Article III of the U.S. Constitution, Utah has no 28 USC 1331, "federal question" jurisdiction to retry the same issues already litigated to the lawyers' advantage arising in Navajo Nation and United States Courts.

The Navajo Nation Court identified Mr. Ickes' charges against me being a "bold faced liar" (ADD 0032, 0048) were totally untrue…after 9 months of the Navajo Nation District Court relying on Mr. Ickes. ADD 0048. The U.S. District Court refused to disqualify me for my attempt to represent Mr. Mark Maryboy, a defendant named officially only, who as a member of the Navajo Nation and a San Juan county commissioner, was FULLY supportive of my clients, and who NEVER gave Mr. Trentadue any consents to represent him. (ADD 0401). The charge of having conflicts in representation, or trying to represent a person already being represented are untrue. But to make that finding, Utah Courts would have to give credibility to a US-NN nation to nation contracted, trained, monitored, and mutually financed tribunal, who selects jurors by zip code, not Navajo membership. [ADD 0001 et seq.]. All motions for sanctions in US District Court were denied. The motion for sanctions and costs in the 10th Circuit court were denied. See, September 10, 2002 [ADD 0088 at 0091]; Oct. 31, 2005 [ADD 0095] dkt. 754; July 2, 2008 [ADD 0098 at 0099]; 8. September 28, 2007 [ADD 0100 at 0101]. United States Tenth Circuit Court denying damages. Dec. 10, 2009 [ADD 0102 at 0113].

None of these motions in the other jurisdiction were appealed. *Ute Indian Tribe of the Uintah & Ouray Reservation v. Myton* (10th Cir., August 9, 2016)("Myton") *Ute Indian Tribe of the Uintah v. Utah* (10th Cir., June 16, 2015) ("Ute") bar state court relitigation.

At no time have the Prosecutors cited to a UTSCT Rule giving Prosecutors or Trial Courts delegated authority to retry or relitigate Court decisions demonstrating this Appellant was not committing misconduct.

No evidence other than untrue statements under oath by Mr. Ickes and Mr.

Trentadue, support any findings different than the Navajo and Federal Courts' orders. Mr. Trentadue and Mr. Ickes have public patterns of apparent dishonesty. [12] Mr. Ickes's statements under oath were nearly all perjured. This Appellant NEVER argued that the defendants "closed" the clinics. They locked down ambulance garages, they stopped pharmacy and lab services for a time, they kept billing patients through "Professional collections" even hailing Navajo Nation residents into 7th District court on the bills, AFTER they were well aware the billing process was driving patients from going to the clinics, they charged money at the time of services, and required proof of Certified Degree of Indian Blood, that elderly people often did not have, instead of their public health card, or merely calling to verify they were I.H.S. patients.

---

[12] [22] **Mr. Trentadue** ("The investigation further demonstrated strong evidence of false and misleading statements made to the court by and on behalf of Trentadue." FBI Inspector's Report - A REVIEW OF ALLEGATIONS OF WITNESS TAMPERING AGAINST THE FBI IN A CIVIL ACTION AT THE UNITED STATES DISTRICT COURT FOR THE DISTRICT COURT OF UTAH. case 2:08-cv-00788-CW-DBP Document 231-1 Filed 11/07/14 Page 20.)
Mr. Ickes Seaport Loan Prods., LLC v Lower Brule Community Dev. Enter. LLC 2013 NY Slip Op 51765(U) [41 Misc 3d 1218(A)] Decided on October 22, 2013 Supreme Court, New York County Bransten, J. Found Mr. Ickes represented ALL the Lower Brule Sioux Indian Tribe's numerous corporations and shell corporations. Mr. Ickes, after the highly negative Navajo and U.S. Court findings, somehow secured a Department of Interior 90% principal and interest guaranteed about a $22 million dollar loan, that did not go to the Indian Tribal chartered company, but went instead ultimately to bail out a non Indian Westrock Corporation, that Mr. Ickes was supposed to have a Tribal advisory program that never came about. Westrock went bankrupt, but the DOI was left holding the paper after legal costs and fees were paid, in part to Mr. Ickes, if I understand his truncated business. The money did not go to the tribal members. Tribal Counsel members responsible for regulating the corporations set on the corporations boards. See, Human Rights Watch Human Rights Watch, SECRET AND UNACCOUNTABLE THE TRIBAL COUNCIL AT LOWER BRULE AND ITS IMPACT ON HUMAN RIGHTS, January 2015 hrw.org.

Of course ruling for this Appellant means giving claim and issue preclusion to retrying Navajo and Federal Court orders in state courts. This position has been shown to not be the pattern for Utah for forty years. *Ute, Myton, supra*.

Conclusion: The Prosecutors and lower trial court Judges, have not provided any legal basis allowing them or Utah courts to relitigate other jurisdiction's Orders dealing specifically with the "same issues" as Prosecutors admitted to Judge Jenkins (ADD 0628 l. 1-3), then the case should be dismissed as outside its federal supremacy limitations.

Issue 3. The People of the State of Utah exceeded their inherent authority by passing the 1984 amendment to Article VIII sec. 4 of the Utah Constitution, that deprives all Utah lawyers of the Equal protection of the three branches of government, thus violating the U.S. Constitution's 14tth Amendment.

The United States Supreme Court over a hundred years ago set the U.S. Constitutional standard for 5th Amendment Due Process for the dignity of the office the lawyer holds, and under the 14th Amendment, these standards must apply to Utah lawyers.

This Court held in Injured Workers v. State, 2016 UT 21, that the UTSCT authority over lawyer discipline has no three-branch control or oversight or limitations. As such, the 1984 Amendment deprives all Utah Lawyers as a class of the Equal Protection afforded all other Utah citizens as to their property rights, here, in professional licenses.

> **Article V, Section 1. [Three departments of government.]**
> The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

There is no governmental interest in removing the three branch safeguards on lawyers' interests, over say medical doctors, or dentists, or others dealing with the most personal aspects of Utah citizens. Further, the Enabling Act identifies Utah will adopt no provisions repugnant to the US Constitution. The 14th Amendment says all Utah citizens will be treated equally. Utah lawyers are definitely not so treated. Notably, this Court was appraised of numerous Prosecutor Rule violations in Tyler Larsen v. Utah State Bar, 2016 UT 26 in his discipline. All the Prosecutor's rules violations were ignored. With other governmental oversight, they may not have been so easily dispensed with. Notably, four times this Court based its suspension on an unclear record. Id. at page 14 and fn. 1.

Under Utah's Enabling Act Sec. 2, and Utah Constitution Aricle I sec. 3, the guarantees of Equal Protection of the law under the U.S. Constitution's 14th Amendment are secured.

Conclusion: The Utah Constitutional Amendment that delegates authority to this Court, as this Court interprets it, violates the U.S. Constitution's 14th amendment, and thus also, the 5th Amendment, and here this Appellants 1st Amendment to advocate freely for her clients. Without U.S. Constitutionally comporting delegation of authority to the UTSCT, the entire system is void for lack of Due Process and Equal Protection under the U.S. Constitution. Without the three branch protections equally extended to all other professionals, the Utah lawyers are subject to the Prosecutor's whims, arbitrary, uninvestigated prosecutions, as this one is, including basing such cases on large or powerful opposing counsel perjured hearsay testimony. Not unpredictable when persons have unlimited powers.

Issue 4. This Court has exceeded the Utah Constitution's authority by adopting

lawyer discipline rules that fail to comport with U.S. Constitutional 5th and 14th Amendment standards protecting lawyer's interests in their licenses.

Under U.S. Constitution and US Supreme Court standards, Professional license revocations, forfeitures, are penal in nature.

> At the common law, the words crime and offence are used as synonymous and universal terms, and as comprehending every act for which a forfeiture of any legal right might be worked, or penalty imposed, or punishment inflicted, in any form of judicial proceeding. [Bar proceedings penal]
>
> The words, the 'law of the land,' mean 'due process of law,' and this implies that there shall be some form of legal process, sufficient allegations or charge, due notice to the party proceeded against, the opportunity to answer to and contest the charge or allegations, and to be heard or tried in a legal and regular course of judicial proceedings, by an impartial judge. And these rights exist in all cases, civil or criminal, whether by the exercise of a court's ordinary jurisdiction, with trial by jury, or by the exercise of the discretionary or summary jurisdiction of a court, without the right to trial by jury.

Randall v. Brigham, 7 Wall. 523, 528-529, 19 L.Ed. 285, 74 U.S. 523 (1868)

This Court has identified that the United States Constitution, that the United States Supreme Court interprets, is the "floor" of a citizen's rights' protections below which no state can go. *State v. Briggs*, 199 P.3d 935 (Utah 2008) states what any law school student in state constitutional law 101 knows,

> ¶ 26 Nevertheless, the protections in the federal Constitution provide a constitutional floor, which, if Utah's Constitution or laws provide a lesser level of protection, renders interpretation of Utah's Constitution unnecessary.26 In other words, if the challenged state action violates the federal Constitution, we need not reach the question of whether the Utah Constitution provides additional protection; we may instead resolve the case with reference only to the federal Constitution.

Emphasis Added.

The U.S. Supreme Court says the U.S. Constitutional standard for lawyer license

deprivations is “quasi criminal”, not civil. *In re Ruffalo*, 390 U.S. 544, 551 (1968) (“ These are adversary proceedings of a quasi-criminal nature. Cf. In re Gault, 387 U.S. 1, 33, 87 S.Ct. 1428, 1446, 18 L.Ed.2d 527.”)(notably the oral hearing in Ruffalo, an eight to 0 vote, shows that his complainant that led to his Ohio disbarment, was a lawyer working for the railroad Mr. Ruffalo frequently sued, similar to this case.)

The U.S. Constitution and U.S. Supreme Court recognizes not only important property interests lawyers’ have in their professional license, they recognize important and inseparable liberty interests in securing that license.

In re Moncier, 550 F.Supp.2d 768 (E.D. Tenn., 2008)

> The reputation of an attorney is one of his or her most valued possessions. In re Williams, 156 F.3d 86, 90 (1st Cir.1998) ("It is trite, but true, that a lawyer's professional reputation is his stock in trade, and blemishes may prove harmful in a myriad of ways."). Most attorneys consider their reputation a badge of honor. Any complaint lodged against an attorney whether founded or unfounded is a stain on that badge. To quote from a very familiar formulation of the importance of an attorney's reputation:
>
> The reputation you develop for intellectual and ethical integrity will be your greatest asset or your worst enemy. You will be judged by your judgement. Treat every pleading, every brief, every contract, every letter, every daily task as if your career will be judged on it. There is no victory, no advantage, no fee, no favor, which is worth even a blemish on your reputation for intellect and integrity ... Dents to [your] reputation are irreparable.

Thus, the federal courts recognize the need for 1) an adversarial system including minimal pre trial investigation of the charges[13], 2) linking facts with claims such that there is adequate advance notice to the lawyer to be understand the charges and be able to respond[14], 3) a declaration of the type of discipline prosecutors seek prior to the lawyer being

[13] *Middlesex County Ethics Comm. v. Garden State Bar Ass’n* 457 U.S. 423; 73 L. Ed. 2d 116 (1982) U.S. LEXIS 2638

[14] *In re Ruffalo*, 390 U.S. 544, 551 (1968)

called upon to answer them, id., 4) a heightened "clear and convincing standard" of evidence to support the charges, and to support the discipline meted out[15], with 5) rules that must be followed[16], and 6) impartial triers[17] to enforce the Rules. These standards are followed by all United States Courts that have their own lawyer discipline panels, that the Prosecutor could and should have tried to avail himself of, instead of using his authority to "step into" and regulate, "bring order" (ADD 0204), to the federal court process to the benefit of Utah's view that Indian Nations simply don't exist under Utah's pre statehood "State of Deseret" as Mr. Trentadue so unmeritoriously argues in the 10th Circuit.

Utah's system is civil, Rule 14-501, thus using civil rules, eliminates the Prosecutor's burden, shifting it instead to the lawyer. *In re MacFarlane***,** 350 P.2d 631,636 (Utah, 1960)

---

[15] "Loss or suspension of the physician's [lawyer's] license destroys his or her ability to practice medicine [law], diminishes the doctor's [lawyer's] standing in both the medical [legal] and lay communities, and deprives the doctor [lawyer] of the benefit of a degree for which he or she has spent countless hours and probably tens (if not hundreds) of thousands of dollars pursuing. The severity of such a penalty has led the United States Supreme Court to note that in such situations jurisdictions "reduce the risk to the defendant of having his reputation tarnished erroneously by increasing the plaintiff's burden of proof."
Addington v. Texas, 441 U.S. 418, 424, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979)

[16] *Hamdi v. Rumsfeld*, 542 U.S. 507, 530 (2004)("the importance to organized society that procedural due process be observed,"[] emphasizing that "the right to procedural due process is `absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions").

[17] *See, United States v. Mississippi Valley Generating Co*, 364 U.S. 520, 549 (1961)(" an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government.*"). Liljeberg v. Health Services Acquisition Corp,* 486 U.S. 847, fn. 12, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1987) the Due Process clause will sometimes bar a Judge from ruling on a case, if circumstances "would offer a possible temptation to the average [judge] . . . [to] lead him not to hold the balance nice, clear and true." ' Id.

(J. Wade dissent). Exactly as done here, when Prosecutor Townsend admitted to Judge #2 Honorable Judge Trease, "We are simply not going to get to the point where we can put on evidence and have an adjudication trial in this case." ADD 0215. Why? There was no "screening panel", ADD 0244, no investigation of the charges in one hour limited "hearings" ADD 0248-0250, no fact finding (ADD 0268, 0275), no evidence to support the charges the "subgroup" identified linking facts with charges with claims.

Had the federal Constitutional comporting model used in federal courts, and nearly all the states in the union been followed, this case, and other cases attacking lawyers for what they advocate in trial courts and their client relations, we would not be here today.

Conclusion: The US Constitutional standards under Utah's Constitution's Article I sec. 3 are the "supreme law of the land". This Court's "civil" Rule 14-501, standard, and "preponderance of evidence" Rule 14-517 standard, and the lack of rules allowing the Utah Bar elected commissioners, and authorizing trial courts to read the rules plainly and strictly, as for all other Utah citizen's important property interests, as against Prosecutor's violating the rules, combined with Rule 14-506 allowing trial judges to be subject to the Prosecutor, deprives all Utah lawyers of impartial triers who do not have to worry about having a target on their back if they rule against the unrestrained Prosecutors, who carries this Court's delegated authority unrestrained by this or any court enforcing the Rules alleged to protect lawyer's interests in their licenses. Utah's system is an inquisition, where, as here, trial courts can disbar a lawyer without a trial, and then the Prosecutor can prosecute the lawyer's lawyer albeit for litigation acts in a different case. Utah's system is void for lack of U.S. Supreme Court defined 5th and 14th Amendment Due Process and Equal Protection, and these issues

Issue 5. The Prosecutors' numerous UTSCT Rule violations eliminated the only source of delegated authority, and rendered the entire prosecution void for lack of Delegated Authority, and lack of Due Process and Equal Protection of the law.

Under *Hamdi,* when Rules of Procedure are violated, then U.S. Constitutional 5th amendment Due Process is denied, and the judgment is void. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) ("A judgment rendered in violation of due process is *void* in the rendering State and is not entitled to full faith and credit elsewhere.") However, in Utah, this Court governs lawyer discipline "by rule". Article VIII sec. 4. So if the Prosecutors are acting outside any UTSCT, as here, by dividing the Screening Panels in half, by defining a "Screening panel" the same as a "quorum", eliminating "*quorum of a screening panel*".

The Supreme Court jealously protects its exclusive policy / rule making authority by making it perfectly clear right in Rule 14-501(b):

(b) Under Article VIII, Section 4 of the Constitution of Utah, the Utah Supreme Court has exclusive authority within Utah to adopt and enforce rules governing the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law. [18]

Any deviation from the RLDD by the OPC or the Committee committed prior to the filing of the complaint with the trial Court, that is ignored by this Court, would be the equivalent the Prosecutors working with the trial judges they can prosecute, rewriting the

[18] The Court also specifically reserves in Rule 14-103(c)(2) the authority to: … (c)(2) approve all rules and regulations formulated by the Board for admission, professional conduct, client security fund, fee arbitration, procedures of discipline and disability, legislative activities, unauthorized practice of law, and Bar Examination review and appeals; …

RLDD so as to "adopt and enforce" new rules of its own discretion, in direct violation of Rule 14-501(b). This it obviously they have done here.

> We therefore address ourselves to its meaning, keeping in mind one of the cardinal rules of statutory constructions, viz., that the interpretation must be based on the language used, and that the court has no power to rewrite a statute to make it conform to an intention not expressed.
> The legislative intent being plainly expressed, so that the act read by itself, or in connection with other statutes pertaining to the same subject, is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms. If a legislative enactment violates no constitutional provision or principle, it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage.

Mountain States Telephone & Telegraph Co. v. Public Service Commission et al., 155 P.2d 184, 185 (Utah 1945).

The term "shall" is generally "presumed mandatory" and has "a usually accepted mandatory connotation" that requires strict compliance with the other statutory terms. See Board of Educ., 659 P.2d at 1035;

> Brewster v. Brewster, 2010 UT App 260, 241 P.3d 357, 362 (Utah App., 2010); Herr v. Salt Lake County, 525 P.2d 728 (Utah, 1974)("The meaning of the word shall is ordinarily that of command. … We think the County Commission should abide by its, own ordinance which says it shall make its decision within seven days after the hearing, and if it fails so to do, it loses its jurisdiction in the matter.")
> ...since "shall", a word with a usually accepted mandatory connotation, has been used throughout the statutory provisions, the statutes in question must be interpreted strictly as they are plainly written. …. Only by this construction is legislative intent followed to carry out the purposes of the statutes in a manner which is consistent with their language.

Bd of Educ. Granite School Dist. v. Salt Lake County, 659 P.2d 1030 (Utah 1983).

> Where legislation is clear, we must "refuse to consider public policy arguments or otherwise attempt to assess the wisdom of the legislation. Our duty is to implement the law as it reads unless it results in an absurd outcome." "[I]t is not our prerogative to rewrite [a] section or to question the wisdom, social desirability, or public policy underlying it." "[I]f a statute is infirm, 'amendments to correct the inequities should be made by the legislature and not by judicial interpretation.'"

Reedeker v. Salisbury, 952 P.2d 577, 586 (Utah App 1998)(citations omitted).

Rule of Professional Conduct 8.5 was adopted while Prosecutor Walker was on the Court's Rules of Professional Conduct advisory committee. He well understood in 2005, that this case was occurring in a non state forum. In 2007, he well understood that without reciprocal discipline, there would be no evidence to support his charges that opposing counsel supported. Rule 8.5 states, Rule 8.5 (b)(2) ("A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.") emphasis added. When Mr. Walker made the decision to prosecute the case and retry or displace federal and US –NN Contracted triers, he knowingly, willfully, violated Rule 8.5. When no investigation was done under Rule 14-503 and 510, the Prosecutor in administering the screening panels also violated these rules, to the direct infamy and harm to this Appellant by the stigma of a "badge of infamy" she will always where.

When Justice Lee denied a stay of the disbarment, ADD 201b, he also participated with the Prosecutors in harming the Appellant, particularly when there was no hearing on the matter.

Conclusion: Consequently, if there has not been strict compliance in this case with each mandatory requirement of the RLDD, then the Court must conclude that the preconditions to it acquiring jurisdiction are lacking. Delegated authority "by rule" stopped the second the Prosecutors became policy makers and violated the Rules. This Court became complicit in this matter when it has refused to stop the processes it well understood were violating the

Rules. Only dismissal of the case brought without delegated authority is left.[19]

Issue 6. Under the U.S. Constitution's 5th and 14th Amendments, this Court has a duty to stop any lower court processes lacking jurisdiction, and/or involving prosecutorial misconduct of Rules violations depriving lawyers of Due Process and equal protection.

For years, this Appellant believed the UTSCT had each lawyer's interests at heart. Now, this Appellant understands only too well that large law firms, who have profited in possibly the millions by challenging Indian Court jurisdiction in state courts, are whose interests this Court most values, and by any and all means a renegade Prosecutor chooses, while he operates under a cloak of apparent authority of this Court that will not stop his invasions of lawyers' important property rights.

Rule 14-503(d) explicitly requires that a "screening panel" consist of one-quarter of the 32 member Utah Supreme Court-appointed Ethics and Discipline Committee members.

> (d) Screening panels, quorums. The Committee members, except for the Committee chair and Committee vice chairs, shall be divided into four screening panel sections of six members of the Bar and two public members. The Supreme Court shall name a screening panel chair from each screening panel, who shall preside over the screening panel …."

How the system in reality actually operates is "shall" is a "smoke and mirror" term of art to pacify lawyers who believe as this Appellant once believed. "Shall" means only what this

[19] That is not to say, however, that the Court cannot retain jurisdiction to hold the OPC counsel personally accountable for their misconduct in bringing this case in clear violation of Rule 11, UCA 78B-5-825, and pursuant to the Court's inherent powers to sanction the OPC counsel's failure to voluntarily dismiss this case when it first realized that its "sub-panel" practice did not comply with the RLDD and therefore switched its unlawful procedures. It is believed that the OPC made the correction only when Ms. Rose brought the issue to its attention.

Court might mean, maybe, sometimes, as long as an lawyer's pleadings, filings, etc are not repugnant to what this Court thinks they should be, on a case by case basis.

Every Bar license should have a disclaimer advising the lawyers that U.S. Constitutional, and US Supreme Court standards do not apply to Utah lawyers, and are not the "supreme law of the land" when the Prosecutor, who lacks restraint, decides to "name" "blame" then "claim" a lawyers' license by any means possible, even using perjured testimony, and refusing to recognize bona fide US recognized tribunals rulings.

But then, this Court well understands all of this and upholds it anyway by refusing to restrain the Prosecutors, and even authorizing the Prosecutor to prosecute the trial judges. The people profiting, large well-healed lawyers and law firms who are politically well connected, sufficient to use the Prosecutor to destroy arbitrarily selected lawyers.

Conclusion: No Prosecutor or state court ruling has ever explained how Prosecutors knowingly violating the UTSCT rules, can say they are acting with "by rule" delegated authority. Jurisdiction "by rule" is absent, and Due Process was denied. The entire case, at all levels, and in every way, is void. Particularly given the burden on Judges that they may be prosecuted for "professional misconduct" or "obstructing justice" if they do not also destroy the lawyer.

Issue 7: The lawyer discipline process is void if the Prosecutor fails to produce the records necessary for this Court to govern the lawyer discipline in this case because of the Prosecutors a) not producing the screening panel records, and b) disobeying the Trial court's Rule 7 orders they failed to produce.

Under Worthin, supra, this Court has no records to know how or why the initial screening panel did what they did. The Prosecutors have no rules obliging them to disclose the records, though they are this Appellants' own records… since trial courts can't oblige

the Prosecutors to follow the Rules. Prosecutor Townsend disobeyed the trial Court's order to submit a Rule 7 order, thus creating a "hanging appeal".

And the Disbarment Order by default is

(i) unsupported by substantial evidence, (ii) gives relief in excess of what is plead in the complaint; (rule about to change Nov. 1, 2016); (iii) recites the formal complaint's paragraphs virtually verbatim without linkages of the "facts" to the false "claims", outside the entirety of the litigation (what Judge Jenkins says is unfair). [ADD 0640] *Kilpatrick v. Bullough Abatement, Inc.,* 199 P.3d 957, 963, 2008 UT 82 (Utah, 2008)("Because the final order was never prepared in compliance with rule 7(f)(2), the order never became final…") See, *Butler v. Corporation of The President of The Church of Jesus Christ of Latter-Day Saints*, 2014 UT 41, *Central Utah Water Conservancy District v. King*, 2013 UT 13; *Giusti v. Sterling Wentworth Corp.*, 2009 UT 2; *Houghton v. Dep't of Health*, 2008 UT 86; and *Code v. Dep't of Health*, 2007 UT 43. *Schwenke, In re*, 865 P.2d 1350, 1354 (Utah, 1993)(facts must be supported by substantial evidence).

Conclusion: Without jurisdiction, without US Constitutional protections, with this Court refusing to uphold and enforce its own rules, without substantial evidence, with hanging appeals, without records, investigation factual findings, the Prosecutors have successfully achieved a disbarment, slandering this Appellant's license, name, reputation publicly, forever in a computer age, all without a trial, without rules, without any legal authority in Utah regulating them at any and all stages of the process. But then, this lawyer did steadfastly hold that Indian Courts have jurisdiction over non Indians, and without enforceability of US recognized NN court orders, her clients had NO Due Process

anywhere, just like this Appellant. This Court does and should know better. *Myton* at page 18. Dismissal of the case entirely is all that is left.

So signed this Nov. 22, 2016

/s/ Susan Rose

CERTIFICATEOFCOMPLIANCE

Pursuant to Rule 24(f)(1)(C) of the Utah Rules of Appellate Procedure, I hereby certify that this Brief contains 12, 8008 words, exclusive of the items set forth in Rule 24(f)(1)(B),and therefore complies with the type-volume limitation set forth in Rule 24(f)(1)(A). I relied on the word count function in Microsoft Word to perform this calculation.

So signed this November 23, 2016 /s/ Susan Rose

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of November, 2016 two copies each of the foregoing **BRIEF OF APPELLANT SUSAN ROSE AND HER ADDENDUM** were served via U.S. Mail, postage prepaid, or by hand delivery on the following:

Mr. Adam Bevis for-
Mr. Billy Walker; Ms. Barbara Townsend
Office of Professional Conduct
Utah State Bar
645 S. 200 East
Salt Lake City, Utah 84111
(801) 297-7042
adam.bevis@utahbar.org

Mr. Sean Reyes- FOR UTAH STATE
Office of the Attorney General
Attn: Utah Solicitor General
320 Utah State Capitol
P.O. Box 142320
Salt Lake City, Utah 84114-2320
(801) 366-0260
(801) 538-9600
(801) 366-0300
notices@agutah.gov

Mr. Daniel J. Becker
Court Administrator – for UTAH SUPREME COURT
Administrative Office of the Courts
450 South State
P. O. Box 140241
Salt Lake City, UT 84114-0241
Voice: 801-578-380

Appellant- Appearing Pro Se

Appellee's Counsel

/s/Susan Rose

DISPOSITIVE PROVISIONS

Constitutional Provisions

Article VI of the United States Constitution Sec. 2 Supremacy Clause

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Utah Constitutional Limitations on the Utah Supreme Court and Prosecutors

1. Utah Constitution Article 1 sec. 2.

   All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

2. Article I sec. 3.

   The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

3. Article 1 sec. 7.

   No person shall be deprived of life, liberty or property, without due process of law.

4. Article 1 sec. 11.

   All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

5. Article 1 sec. 24.

   All laws of a general nature shall have uniform operation.

6. Article I sec. 26

> The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

7. Article VIII Sec. 4

> The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the Rules of Procedure and Evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature. Except as otherwise provided by this constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah. The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

Rules Provisions

NO RULES

No rules delegate authority to the Utah District Courts or elected Utah State Bar Commissioners to regulate the Prosecutor's Policies, Procedures, or activities.

No rules subject the Prosecutors to the same prosecution methods used for Utah State Bar members.

No rules provide for lawyers any means of immediately stopping or preventing arbitrary and capricious invasions of Lawyers' liberty and property interests in their licenses, by the Prosecutorial misconduct violations of the Rules.

Utah Rule of Professional Conduct Rule 8.5 as adopted in 2005

> **Rule 8.5. Disciplinary Authority; Choice of Law.**
> (a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this

jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(b)(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(b)(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Comment

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See Rules 6 and 22, Utah Rules of Lawyer Discipline and Disability.

[1a] Utah has declined to adopt the portion of ABA Model Rule 8.5 Comment [1] providing that a lawyer who is subject to Utah disciplinary authority under Rule 8.5(a) is deemed to have appointed a court-designated official to receive service of process. This would be a substantive procedural rule that is not appropriate for these Rules. The last sentence of ABA Comment [1] is an unnecessary comment on jurisdiction in civil matters, and Utah has declined to adopt it.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct that impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession).

Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that, as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice-of-law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

Rule 14-501. Purpose, authority, scope and structure of lawyer disciplinary and disability proceedings.

(a) The purpose of lawyer disciplinary and disability proceedings is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers and to protect the public and the administration of justice from those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities.

(b) Under Article VIII, Section 4 of the Constitution of Utah, the Utah Supreme Court has exclusive authority within Utah to adopt and enforce rules governing the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

(c) All disciplinary proceedings shall be conducted in accordance with this article and Article 6, Standards for Imposing Lawyer Sanctions. Formal disciplinary and disability proceedings are civil in nature. These rules shall be construed so as to achieve substantial justice and fairness in disciplinary matters with dispatch and at the least expense to all concerned parties.

(d) The interests of the public, the courts, and the legal profession all require that disciplinary proceedings at all levels be undertaken and construed to secure the just and speedy resolution of every complaint.

Rule 14-506. Jurisdiction.

(a) Persons practicing law. The persons subject to the disciplinary jurisdiction of the Supreme Court and the OPC include any lawyer admitted to practice law in Utah, any lawyer admitted but currently not properly licensed to practice in Utah, any formerly admitted lawyer with respect to acts committed while admitted to practice in Utah or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of any rule promulgated, adopted, or approved by the Supreme Court or any other disciplinary authority where the attorney was licensed to practice or was practicing law at the time of the alleged violation, any lawyer specially admitted by a court of Utah for a particular proceeding, and any other person not admitted in Utah who practices law or who renders or offers to render any legal services in Utah.

(b) Incumbent and sitting judges. Incumbent and sitting judges are subject to the jurisdiction of OPC only for conduct that occurred prior to the taking of office.

(c) Former judges. A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the Supreme Court not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline provided that the misconduct was not the subject of a judicial disciplinary proceeding as to which there has been a final determination by the Supreme Court.

(d) Part-time judges. Part-time judges, while in office, are subject to lawyer disciplinary and disability proceedings for acts outside their judicial capacity.

Rule 14-517. Additional rules of procedure.

(a) Governing rules. Except as otherwise provided in this article, the Utah Rules of Civil Procedure, the Utah Rules of Appellate Procedure governing civil appeals, and the Utah Rules of Evidence apply in formal discipline actions and disability actions.

(b) Standard of proof. Formal complaints of misconduct, petitions for reinstatement and readmission, and petitions for transfer to and from disability status shall be established by a preponderance of the evidence. Motions for interim suspension pursuant to Rule 14-518 shall be established by clear and convincing evidence.

(c) Burden of proof. The burden of proof in proceedings seeking discipline or transfer to disability status is on the OPC. The burden of proof in proceedings seeking a reversal of a screening panel recommendation of discipline, or seeking reinstatement, readmission, or transfer from disability status is on the respondent.

…. (f) Informal and formal complaints against OPC counsel, Committee members and Board. An informal complaint filed against OPC counsel, members of the Committee, or a member of the Board shall be assigned by the Chair to a screening panel. The chair of the assigned panel shall review the informal complaint and additional material, if any, that the screening panel chair asks the respondent to provide. An informal complaint which, upon consideration of all factors, is determined by the screening panel chair to be frivolous, unintelligible, barred by the statute of limitations, is being or should have been addressed in another more appropriate forum, unsupported by fact or which does not raise probable cause of any unprofessional conduct, shall be dismissed without hearing by a screening panel. The chair of the screening panel shall notify the complainant of the dismissal stating the reasons therefor. The complainant may appeal a dismissal by the chair of the screening panel to the Committee chair within 15 days after notification of the dismissal is mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file, and either affirm or reverse the dismissal. If the screening panel chair determines not to dismiss the complaint, or the Committee chair reverses the dismissal on appeal, the Committee chair shall request that the Supreme Court appoint a special counsel to present the case, and if necessary, a special screening panel. In all other respects, the matter shall proceed in accordance with this article. Special counsel shall be a lawyer outside of the OPC appointed by the Supreme Court to act as counsel for investigation and prosecution of the disciplinary complaint. Special counsel shall notify OPC counsel of the results of the investigation.